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Paper No. 9

In re Application of
ALBERT BAUER
Application No.: 08/998,507
Filed: December 26, 1997

MAR 11 2005

Director/Office
Group 3700

: DECISION ON PETITION
UNDER 37CFR1.181(a)(1)

This is a decision on petitioner's request filed under 37CFR 1.181(a)(1) on December 15, 2003. The Petitioner requests that the Commissioner invoke supervisory authority to withdraw the "Notice of Non-Compliance," mailed on November 26, 2003.

File Wrapper History: A review of the most recent file wrapper history shows that a Notice of Appeal was filed on December 2, 2002, appealing from the Final Rejection dated July 2, 2002. An Appeal Brief was subsequently filed on April 10, 2003. In a "Notification of Non-Compliance with the Requirements of 37 CFR 1.192(c)" dated November 26, 2003, the Examiner held the Brief non-compliant, listing various inconsistencies with standards for Briefs established in specific subparagraphs of 37 CFR 1.192. Petitioner is seeking withdrawal of the above noted "Notice of Non-Compliance."

Resolution: The filing date of this application is now more than five years from filing and the Special Status afforded this application is noted. See MPEP 707.02. In view of the familiarity of both the Applicant and Examiner with the claimed invention and, as well as, the Examiner's positions regarding the bearing of the applied statutory provisions affecting patentability, issues and arguments bearing on the Appeal can be determined from the Brief as filed. As the Examiner would have an opportunity during preparation of the Examiner's Answer to clear up any ambiguities in the Brief that might be present, the examiner is directed to accept the Appeal Brief as filed on April 10, 2003 and proceed with the processes leading to the Examiner's Answer. To accomplish this, the Notification of Non-Compliance with the Requirements of 37 CFR 1.192(c) dated November 26, 2003, is hereby vacated.

To the extent listed above, the Petition is Granted.

The application is being returned to the Primary Examiner in Art Unit 3753 to consider the Appeal Brief filed April 10, 2003



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